

CONVERSATIONS ON RESTORATIVE JUSTICE

A talk with Helen Bowen, Kristel Buntinx and Mark Umbreit

*Albert Dzur**

In this special issue of *The International Journal of Restorative Justice* on the evolving meaning of restorative justice, as initiated by Lode Walgrave's essay (this issue), we thought it important to seek out practitioners' perspectives. We invited three experienced restorative justice practitioners, coming from different backgrounds and regions, to engage in a group discussion of how the understanding of restorative justice is shifting.

Helen Bowen is a criminal barrister, youth advocate and drug court lawyer practicing in New Zealand. In 2000, she was contracted by the Department for Courts to provide training to 80 community restorative justice facilitators in four courts in New Zealand. Since then, she has provided training services nationally and internationally, including working with the Thames Valley Police in London and community groups in Northern Ireland. She is on the international global advisory committee for Restorative Justice International.

Kristel Buntinx has worked, since 2001, as a victim-offender mediator for the non-profit organisation Moderator in Belgium. Moderator is recognised and gets funding from the government as the umbrella organisation for victim-offender mediation for adults in the Flemish part of Belgium. She has many years of experience in serious cases such as homicide, murder, armed robbery and sexual violence. She is also a trainer in victim-offender mediation for Moderator and for the European Forum for Restorative Justice.

Mark Umbreit is an internationally recognised practitioner and scholar with more than 40 years of experience as a facilitator of dialogue, peacemaker, trainer, teacher, researcher, and author of 12 books and more than 200 other publications in the fields of restorative justice, mediation, spirituality, forgiveness, and peacemaking. Over the past four decades, he has provided consultation and conducted training seminars and lectures in more than 30 countries (in Asia, Africa, Europe, the Middle East, and North and South America) and nearly every state in the United States.

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1 Early experiences with restorative justice

Dzur: I wonder if we could go around the room and talk about what led you to devote a good part of your professional life to restorative justice. Was there an 'a-ha moment' when you thought, "This is for me"? Was there an experience or something that you studied that led you to this?

Bowen: I'm happy to go first. I was in practice probably ten years before the youth justice legislation changed in New Zealand to provide for family group conferences.

Dzur: In 1989.

Bowen: Yes, that's right. I only come at this from a practitioner viewpoint, although I've written a little bit. I'd been a youth lawyer for a couple of years before the legislation changed in 1989, and largely young people were just institutionalised. Mothers had to say they didn't have control of their children. The whole system was pretty archaic. So they consulted with Māori throughout New Zealand, and changed the law to provide for family group conferences. In my practice, I had a restorative model for youth justice, and then I had the other model, the adversarial model, for the other part of my work. I was working in these two systems, which seemed a bit strange. And the longer I was in a more restorative system, the more I thought it could be effective for everybody.

We started lobbying government in the 1990s, and they changed the law in 2000 here in New Zealand to provide for restorative justice as something that might happen between guilty plea and sentence. And then, later on, the law was changed to make it mandatory for the judge to consider restorative justice, for the judge to refer to a facilitator to see whether restorative justice could take place.

The reason I've stayed involved is reflected in an experience I had. One conference I went to in the very early days was run by a Māori facilitator, who did a prayer in Māori, and it was a Māori family. I felt there was so much more engagement with everybody in the room, compared with this other system I had been in with judges telling parents they weren't good enough and just sending children away. It was a pretty bad system previously. I started to feel there was more engagement, and victims, when they came, they really had something to say, especially with young people. That was quite terrifying for a young person to listen to a victim. There was a lot in that for me that had more meaning and that's why I got involved.

Buntinx: I worked in the 1990s in a centre for offenders in Leuven, Belgium. I worked with offenders in prison, and with their families, but in the same building was also victim support. We had victim and offender support in one building, and I think we did victim-offender mediations before they were commonly done. Sometimes my colleague was seeing a victim and I was seeing the offender of that victim, and she would say to me, "The victim has a question, can you ask the offender?" The first mediation project in Belgium with adult offenders started in that centre, and I was part of the steering group from the offender's point of view. I was in the front row, and so I learned a lot about victim-offender mediation.

When there was an opportunity in 2001 to start in prison with victim-offender mediation and serious crimes, I took my shot, made an application, and I got the job.

Dzur: Can you say more about why you took that leap?

Buntinx: I think I was always interested in offenders and prison. Even as a young person in high school, I was making lectures about women in prison and child abuse. Being part of the steering group taught me that it was also about working with victims. Starting to work with both parties made me realise I had been missing a part of the whole. I worked with one side; to work with both sides, that was an inspiring challenge for me.

Dzur: Mark, you have been a true pioneer in this field. Was there an ‘a-ha moment’ for you?

Umbreit: Back in the early 1970s, I was a radical prisoner advocate. I wanted to keep victims away, thinking that they were going to hurt my client. I was a supporter of inmates in our state prisons who were demonstrating, particularly Black inmates. I’d organise demonstrations with citizens on the outside. I began totally offender oriented. An ex-felon, the late Jim Bradley, had just graduated from the Indiana State Prison and I had just graduated from Valparaiso University. We partnered with local community people in developing the first halfway house for ex-offenders in the state of Indiana, and that organisation, called Prisoner and Community Together (PACT), still exists with a number of newer programmes.

Howard Zehr contacted me in the mid-seventies. He and the Mennonite Central Committee developed the first victim-offender reconciliation programme, VORP, in Elkhart, Indiana, based on the model in Kitchener, Ontario, and it was linked to the Probation Office. They realised they needed to get it out of Probation and were looking for some community-based organisation to sponsor VORP. We partnered for a number of years and set up Elkhart County PACT and helped develop that programme with some partial funding. Then eventually they spun off on their own, and they’ve been on their own for decades.

During the 1980s, Howard spoke frequently of restorative justice and then his seminal book *Changing lenses* was released in 1990, providing a great deal of insight, hope, and an entirely new vision for doing justice (Zehr 1990). My passion for restorative justice grew far beyond academic interest when I witnessed and participated in a VORP session.

It was an ‘a-ha moment’. This involved the head of the local Republican party in a conservative county who had his home burglarised. He was a gun owner. When I witnessed this restorative dialogue with a juvenile offender, the anger expressed, but then the compassion expressed, it was like – whoa! In those early years I couldn’t put it into words. In my writings, I had no way of communicating it other than saying it was an ‘a-ha moment’. In my more recent books and talks, I use the terms ‘energy’ and ‘shifts in energy’, as in my book *Dancing with the energy of conflict and trauma: letting go, finding peace, in families, communities, and nations* (Umbreit 2013).

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I've witnessed those moments all over the place. When I see conflicts of any sort, from crime to family conflicts, to community conflicts, even hate crimes and political conflicts, I don't just listen to the words; I try to sense the energy beneath the words. I used to think this kind of language was flaky, but I've learned over the years a blending of the two realities of intellect and energy. My 'a-ha moments' have gone right up to this date with work I've done with clergy sex abuse, including bringing our archdiocese head, together with other survivors. I have witnessed these 'a-ha moments' in many settings, cultures, and countries over the past decades. I'm interested to talk about Lode's article because it touches on many issues that I have felt passionate about over the years.

2 Refocusing restorative justice on criminal justice or reimagining its broader context

Dzur: Lode Walgrave is arguing, in the lead essay for this issue, that restorative justice has become too expansive and needs to refocus its energies towards the criminal justice domain. I'm curious what you all think about that point.

Bowen: Well, I think it's an interesting argument, but from my experience it's never been anything other than criminal justice. I don't think that it becomes less coherent or less effective the more widely we go. Here in New Zealand, I'm part of a trust that is expanding into post-sentence restorative justice. It's a Tikanga-based process for Māori offenders as they're getting ready to be paroled. They meet with elders in the prison, and then we gauge whether the victim would like to come, and they have a gathering together outside once they're paroled. My experience of Māori Indigenous processes here is that they are wide-ranging. It's a huge learning curve for me, and for them it's restoring the balance in some way. The term 'restorative justice' just doesn't fit with what they do. But for me it feels very restorative, as a way of describing it in a European sense.

There are all sorts of things that can happen, I think, in restorative justice. As a lawyer I have experienced it as providing more for people than our criminal justice system does. I have learned about victims being exposed to restorative justice, and I didn't really think about them before so much, although I was interested. Now, having actually experienced victims, offenders, families in the room, I have started to get a broad sense of what justice is, in fact, and I haven't had that learning in the courtroom.

My children are Māori, so I'm very interested in Indigenous law. I also work in a drug court, and I've seen the expansion of the idea of restorative justice. I don't know if it will necessarily transform justice, but I think we have to do something different. Worldwide, prisons are currently very full of Indigenous and African American people and people of colour. I think we have to do something, and maybe what we're trying to do in New Zealand is to get the voice of Māori to be facilitators, to be academics. Everybody in our pilot project is Māori other than me. And that seems to me to be a better way of starting to answer some of these questions. It's not exactly on point, but I think that expanding isn't necessarily a bad thing.

Dzur: I think that's exactly on point. Kristel, what are your thoughts on Lode Walgrave's article?

Buntinx: I have worked only in the criminal justice process, as does my organisation. Sometimes we have cases from victims who don't want to go to the police, but that's a grey zone. It's always related to the criminal justice system. We do have in Belgium and in Europe some restorative practices. For me, it's a good thing, but it's not what I do. I believe in dealing with conflicts in a restorative way, but it's something else. I only work in cases where there is some connection with the criminal procedure. At some point in Belgium everything became restorative: you even had, in kindergarten school, a restorative wall, so if one kid was doing something bad to another kid, they could go to the wall. I think it's a good thing, but I can understand what Lode Walgrave is saying, that there is some danger in it to call it all restorative. But otherwise, sometimes for me, it's like, what's in a name?

Dzur: What's the danger to you, of having both the work that you do call 'restorative', and the little wall at the school also being called 'restorative'. Where do you see the tension?

Buntinx: Maybe it is that people think it's an alternative way of dealing with conflicts, and that the criminal system is not relevant anymore. It's a difficult question.

Dzur: It is, absolutely. Mark, what are your thoughts on this?

Umbreit: I'm speaking not only from my background as a practitioner and as a scholar, but also as a victim. I've been victimised multiple times, including recently, with my daughter, who was viciously attacked in Europe, and lucky to be alive. I got a whole different, deeper understanding of the reality of secondary victimisation as a parent.

I first met Lode when he had me come to Belgium in the early nineties to speak in his classes and do trainings. I did some of the initial victim-offender mediation trainings there. We had some interesting discussions, but I also could tell that he approached this in a more academic way than I do. I don't mean one is all good or one is bad, just that it's different; there's a time and place for both. On the one hand, I think he's spot on with a lot of what he's saying. In my early years, in the 1980s and the 1990s, and sometimes more recently, I have been deeply concerned about how restorative justice was getting watered down. A lot of programmes call themselves restorative justice, and I look at their description and the words 'victim', or 'serving victims', or 'victim empowerment' are not there. It is basically offender-centric programming. In fact, the biggest critique in the early years from England and in the States came from people working in victim support schemes who were critical of this new thing called 'restorative justice' because it sounded like some thinly veiled offender treatment programme using victims as props. That changed over the years. Also, one of my deepest concerns historically and right to this day is that most restorative justice programmes deal with a lot of cases that would self-correct on their own. They're minor cases. For decades as a practitioner

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and researcher, I've worked with cases of severe violence – with homicide survivors, families who had loved ones killed, people who have been attacked and almost killed, occasionally rape victims. Some of the victim advocates who were critical in general of restorative justice were not critical of working with severe violence cases, because they don't get enough attention. They could see the enormous benefits that restorative justice could have in those cases, providing the opportunity for direct impact on holding the offender accountable who so deeply traumatised their life from violent crime, including homicide, while promoting a greater sense of healing for all who voluntarily participated in the restorative dialogue.

Related to what Helen was saying, my deepest learning on restorative justice in the early years was from Indigenous communities. I've been fortunate, blessed to be invited into a number of different tribal communities. By saying that I don't mean I'm an expert; in fact, that's made it very clear to me how little I know. One of the core principles of native Hawaiian emotional, physical, and spiritual healing, which I learned from an elder there, is called *pa'a ka waha*. It means 'close the mouth', 'be still'. That wisdom, metaphorically, is also expressed in Christian gospels, and certainly in Eastern traditions. This has huge implications for facilitating restorative justice dialogue in multiple settings.

Lode is, I think, right on the one hand, but on the other, I think the more we go in the direction of tightening it up and looking more credible for the criminal justice system, the more we become distant from communities of colour, Indigenous communities. A lot of the issues that Lode addresses have no meaning to folks on the street. I'm learning more and more about what's called public sociology. It's a way of bringing the wisdom of criminology, sociology, psychology, social work, whatever, bringing that down in simple ways through social media, YouTube short videos. It can be accessed easily by people on the streets in ways that have some immediate meaning in their lives.

I have mixed feelings with Lode's essay. He did a great job putting the issues out there. If you really push me, I do believe we need to distinguish between restorative justice and restorative practices. I would like an umbrella term like 'toward healing and accountability', and then, under that, 'restorative justice' and 'restorative practices'. 'Restorative justice' involves interventions, cases, policies that are either directly or indirectly linked to the criminal and juvenile justice systems. 'Restorative practices' may link because there's such an overlap, as in the school-to-prison pipeline, but 'restorative practices' are really based on a lot of Indigenous wisdom. It's not about theories, it's about how we deal with our own lives and our families. Personally, I never thought I'd be alive to witness the way restorative justice has blossomed, not just within criminal justice, but in other areas.

Dzur: I see Helen is nodding in agreement, with the division that Mark has laid out. Is that your line of thought too?

Bowen: Yes, I think that judges would get very nervous about hearing 'healing', but 'accountability', yes, for sure.

3 A nice little place for restorative justice: resisting co-optation

Dzur: The danger of Lode's approach, as he admits, is that restorative justice becomes a thing of the criminal justice system, which raises the spectre of co-optation. That's a danger of Mark's division too.

Bowen: I have been in the middle of a criminal justice system where restorative justice has become part of it, and I see that the criminal justice system has co-opted it and has slotted it between a guilty plea and sentence. It's been able to find a nice little place for it, and it doesn't necessarily mean that it has expanded at all. When judges are sentencing, they look at remorse, so it fits nicely into the remorse package. They can assess how much remorse is present. That's a slightly cynical view, but I think we're very split in the criminal justice system. There are many judges and prosecutors who think it's a waste of time, and that it interferes with the current system. The law is very keen on keeping everybody away from it; it's a system that alienates. Restorative justice doesn't fit with the alienation.

But for those other practitioners, judges, and police who do find it useful, then there's been some real growth. One of the things that judges say is that they learn so much when they read the restorative justice report. They get so much more information that helps inform their sentencing: they get information about what the offender is like, in fact, and what the real impact was for the victim. To that extent, there's some real credit that can be given to restorative justice. In fact, offenders get a discount if they take part in restorative justice – something a lot of the victim community don't like. But I think it hasn't been utilised in the way that it might have been. Almost the moment it was made automatic, then it seemed to become less valuable, because it was part of the system. Judges might say, 'Oh no, it doesn't need to go to restorative justice,' or 'We're too busy,' or 'We don't want to adjourn it further.' It's still a very small number of cases that do end up having a meeting between victims and offenders. Of course, for Indigenous people, everybody is involved, not just the victim and the offender. It only actually has relevance for the European offenders in our system, if you're not going to include the wider family.

Dzur: Kristel, I wonder if you could reflect on this issue of co-optation. You've been doing restorative justice within the system in Belgium for some time. Do you ever feel like you're being pushed too far towards the official side and away from restorative justice?

Buntinx: No, because we are not part of the system. We work together, but they are not my bosses. We are an NGO, and we get our funding from Welfare, not from the Department of Justice, and that's for me very important, to be independent. Justice wanted to be in the beginning some kind of gatekeeper: 'We give you a green light for an offender or a red light.' We said, 'No, we want everybody to have direct contact with us. We don't decide, it is the parties themselves to decide what they want.' We have in Belgium also a very good law, that says that every victim and every offender in a criminal case should get the option of restorative justice. For us

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it's like a side road, and the justice system goes on a different road. On our road, we give parties a voice, and they can decide themselves.

As Nils Christie said, it is really giving the conflict back to them. We ask, 'What do you want? What do you want to say? What do you want to ask?' Sometimes it can be about reconciliation, but it can also be about anger and hate. That's no problem for us. They can contact us directly, there is this law, there is no gatekeeping. The independence takes out most of the risks, though sometimes there is a risk. Sometimes the public prosecutor will ask us, 'Has there been a mediation? And why not? And who was the one who was not willing to go further with it?' They want all that information, but we have confidentiality, so we can say, 'We can't give you that kind of information.' We have built in all those protections, and I think they are necessary.

Dzur: It sounds like you have institutional autonomy in place there.

Buntinx: At the moment we still have, yes. And I really believe that is important.

Dzur: Mark, you brought up a related issue a minute ago, noting that you had seen some restorative justice programmes that were in name only. I wonder if that's a kind of co-optation, the superficiality of some programmes. Where else do you see restorative justice being pulled towards imperatives other than restoration?

Umbreit: There was a large programme in Los Angeles some years ago that the *LA Times* reported on, saying 'New restorative programme found ineffective'. It was an offender-oriented programme that was called restorative justice. There was no victim engagement: none of the standard restorative dialogue programmes like conferencing or mediation or circles. It was deemed ineffective because it didn't reduce recidivism. There was literally no involvement of victims.

Dzur: Why do you think that's happening?

Umbreit: In a general sense, it's because our system is so offender centric. You would think there'd be more pressure not to do that, because so many people who are tough on crime want to support victims. But the criminal industrial complex is not just a fancy word; it's for real. It chugs along. There are so many economic interests. Look at the level of mass incarceration our country has always had. It really astonishes me.

Dzur: Do you think there are institutional patterns reinforcing this?

Umbreit: There are institutional patterns, absolutely. But the way the system goes on and on and on is amazing. Despite the language of reform and major structural change and many good intentions, there is often little real change in the criminal industrial complex.

If it wasn't for the fact that I have witnessed for 40-plus years, right up to the present time, these 'a-ha moments', in some of the most unlikely places, where people you'd think would want to be killing each other, with hatred, and then some

things happen to turn it all around; if that wasn't part of my life experience, I'd be an absolute cynic now.

Very few restorative justice advocates emphasise this, but I'm not afraid to make it clear in my talks that restorative justice is not for everyone, it does not always work, it is not benign. No social intervention or legal intervention is benign, despite what the rhetoric might be. I can give you examples of a peace-making circle, a victim-offender mediation session that I witnessed as part of my research, and a conference, a family group conference that were the farthest thing from a restorative process imaginable.

Something that may be unique to the United States is that a lot of people today, especially newer people, think restorative justice equals circles. They have no understanding of the decades-long experience of victim-offender mediation or conferencing. It's like, 'circles, circles, circles'. Circles are the intervention I use the most in many non-criminal justice interventions, and I really value those. But I focus on what the people need and want, and if they feel safer meeting face to face in a dialogue, that's what we'll do. I'm amazed at how the field has developed. I don't know if it's going to always be called restorative justice, but I think the European sense of restorative justice has tapped into deep Indigenous values that are part of all our cultures going way back, that it's going to be around. This stuff is powerful.

4 Reasons for the underuse and underdevelopment of restorative justice

Dzur: I want to move to another question: whether restorative justice is underused. Helen, you said a few minutes ago that judges were putting restorative justice in a little box. New Zealand is often brought up as an example of a country where restorative justice has one of the strongest institutional footholds. Do you feel that it's underused? And if so, why do you think it's being underused?

Bowen: Yes, I don't think it has the value. The criminal justice system wants to keep everybody else out, and it doesn't really fit.

Dzur: Could you explain?

Bowen: Our legal system, in New Zealand, inherited the English justice system, and so victims don't have a voice in criminal proceedings. Their voice is heard by a victim impact statement; they would only speak if the offender denied the charge. So, although they're allowed to speak on sentence, they very rarely do that. They're not really given time. It's an unwieldy system and they don't know where to fit victims. That's probably a better way to put it.

The restorative justice system we have here is very different; I think that what Mark is talking about is where the name restorative justice has been misappropriated. In New Zealand, it's a victim-focused conference. Whatever the victim wants, we work around that. There are two facilitators, and it is very much driven by the victim, so to that extent victims' voices are heard much more in this process. It doesn't quite fit in our criminal justice system, though, because there's not enough

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time. The courts are all clogged. Offenders appear. There are probation offices, police. There's a system in place. There's no real place there for the victim's voice, only via the victim impact statement. We do have victim advisers in the court as well. There isn't a real place for it and traditionally, they weren't part of the system.

Dzur: Kristel, do you think restorative justice is underused in Belgium?

Buntinx: Yes, although lots of victims and lots of offenders are informed that it exists people still have the wrong ideas. They think it's about an alternative or reconciliation or forgiveness. Because of those wrong images, people don't always contact us, or don't want mediation. In that way it is underused. But we inform lots of people; all offenders in prison know that it exists. We have to put energy in making a better image of it, because people think it's about something else than what it is about.

Dzur: What would that look like to you? How might people learn about it?

Buntinx: We try to explain it to them if they contact us. But if they don't, then I think testimonies can help. If something happens, the media should mention restorative justice. We have lots of processes going now about the terrorist attacks in Brussels airport, but it's never mentioned that there is also a possibility of restorative justice, of victim-offender mediation. At the university, we had a case of a student who died during a first year's initiation. It was in the news a lot, but they never even mentioned restorative justice. I think that's the problem, because people think it's for less serious crimes. It's an alternative. That's still work we have to do in the future.

Dzur: Mark, we're both Americans. And I often think, when we're talking in groups like this, that the United States is underdeveloped when it comes to restorative justice, which is strange.

Umbreit: It is strange. The whole field is full of all kinds of paradoxes and interesting things that just don't seem to fit. Restorative justice is present every night on our public television network. The Kendeda Fund is mentioned as one of the sponsors of this major media source, a supporter of restorative justice and transformative leadership. Every night restorative justice is mentioned. Oprah Winfrey, for the last 20 years, has periodically focused on restorative justice. Her staff initially called me many years ago and wanted me to mediate a murder case in front of an audience. I said I wouldn't mediate a petty vandalism case in front of a clapping and booing audience. She found someone that would, and it was awful. The National Organization for Victim Assistance (NOVA) called me; I had to tell them I had nothing to do with that. But Oprah learned and in the past 10 to 15 years, she's done a number of shows for an entertainment setting and they actually were pretty good: the way they handled them, bringing on crime victims and victim support people.

Older folks who aren't as familiar with social media, we have a lot to learn. My doctoral assistant is working with my large archival database of YouTube videos, talks and some films. He's breaking down 28-minute pieces on a humanistic

approach to restorative dialogue to two minutes. He's doing the same thing with research stuff, adding in music. In my younger years, I would say, 'Oh, come on, we're not really getting at the issues.' But our cultures have shifted. I don't know about Europe or New Zealand, but I know here that the attention spans of young people are short – older people too, but not as bad. We need to rethink how we could use social media to get this message out there to get away from writing reports for institutions. I've known for decades that most legislators don't read my research reports. They want to know they're available if they needed to back up something. But most of us who do research would do better to do a one- or two-page summary of the key points and get it out there, than giving a 60-page report, getting all the details.

5 Restorative justice and serious offenses

Dzur: Let's shift to the question of whether restorative justice is being used enough in serious cases, such as sexual assault. The United States lags behind other countries like New Zealand and Belgium in this. Helen, can you reflect on the issue of restorative justice and serious offenses?

Bowen: There is really no limit at the moment in New Zealand. There is a special group that does sexual offending with offenders who are in jail. They have meetings where victims want to meet with the offenders. They are specialist facilitators with a lot of experience. They have a victim specialist and an offender specialist, and then another facilitator who works with all of the parties. It's a very lengthy process. And similarly, in our adult criminal justice system, we do facilitate meetings between parties where there has been a manslaughter or a murder. So right through the criminal justice system, the process is available, and the research says that it's very effective at that level.

We're doing post-sentence work as well. It's hard to talk to the average person about why that might be a good thing, to have an offender meet with a victim 5 years after the event. But the reality is victims know the date the offender is coming out of prison, and that is a date that is uppermost in their minds. And why would you do nothing about that? The much more intelligent approach is to give people choices, tell them what it might feel like. As Kristel was talking about, we have to explain more and be more in the media about how it works. There are ways of doing that: using short video clips of a point in a conference where something really good happens, for example. We've done it; we've put a few of those online.

I think the more serious the crime, the more effective the process is, because there is that opportunity. A father met with a young person who killed his son in a car crash, and the father just wanted information about what they were talking about in the minutes before the crash. The police had entered into a chase with the car, and that in many ways caused the accident to happen. So, the father had another agenda, but he largely wanted to know what his son was saying in the last few minutes of his life. And that was enough. Sometimes it's just one small thing.

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They'll say, 'I needed to know that,' 'I can understand that,' or 'I can move on to the next phase of my life.'

Dzur: Has there been resistance in New Zealand to using restorative justice in cases like sexual assault?

Bowen: Well, it's taken a long time for it to happen. But the interesting thing is a lot of the research from victims say it's useful. That's why it's happening. There are moves in Australia to have a lot more victim-offender meetings in sexual assault cases. If the research says it's good and victims want it to take place, that's the reason why it's going ahead.

Dzur: And it's voluntary.

Bowen: Yes, totally.

Dzur: Kristel, can you reflect on the status of using restorative justice in serious cases in Belgium?

Buntinx: Yes, I can. I started in 2001 in this project with prisoners who were already convicted. We started in a long sentence prison where most people had life sentences for homicide, murder, sexual assault, armed robbery, kidnapping – the very serious crimes. We chose the prison in Leuven because we thought if we can prove that it works over there, then it's easier to go to the other prisons. And that was the reality.

We had victims who would say, 'We don't want to do a mediation.' I would say, 'That's okay, but do you have questions? Do you want to say something?' And then often the answer is, 'Yes'. So sometimes we start with those small questions. And we end up bringing them together in a meeting. That was the easy part.

After 20 years, I believe that the bigger the impact of the crime, the bigger the need for communication. Also, because of our law, there are no crimes excluded, and it can be in every phase of the criminal procedure: it can be before trial, it can even be later. I did a case a month after the crime, but also I did a case 20 years after the crime, with an offender who was still in prison for a murder. I think that wide possibility – from a few weeks later, until 20 years later – is a good thing.

Dzur: Do you think that there are special skills that are needed for the more serious cases on the part of the mediator or the facilitator?

Buntinx: I don't know if you need special skills. I think it's the same method. Since 2008, I became a mediator in all kinds of crimes, because I wanted occasionally to mediate cases like a fight in a pub or a theft of a bicycle, not only the heavy ones. But I think those 8 years of only working in those serious crimes gave me an expertise to know about the little things which are important. It's not about the skills, it's about expertise. I have done more than a hundred serious cases. It's the expertise which is important, and the training. I was trained by Mark Umbreit.

Dzur: This gets to Mark's point, too, about listening.

Umbreit: You need to have expertise, but equally important is our presence, calming our ego, being present with people where they feel safe. We're giving them choices; we're not making decisions for them. This is what my Indigenous colleagues and friends have taught me over the years. Most of my advanced training, particularly as it has evolved since you were in it, Kristel, is not so much training in technique, at this point, it's been training in how to calm our minds, calm our egos, how to stay out of the way.

Buntinx: How to stay out of it, yes.

Umbreit: There's a 20-minute video I did on YouTube called 'Taming the ego' for restorative justice facilitators. I give a case example at the end where the victim's survivor, whose father had been killed, felt safe enough with me that she said, 'Mark, after the end of the break, could you just go in the other room with my friend there? I really want to talk with the offender myself.' He was a cop, who, in an accident killed her father. In earlier years, I wouldn't have allowed that because I would feel the need to protect them. I've learned over the years that people who choose to have face-to-face dialogues, particularly in serious, violent, homicidal kinds of cases or terrorist cases, they already have a level of strength that is phenomenal. I don't want to overstate that; you have to be sure you're not doing harm inadvertently. But I've had this happen many times where what seems most important is that I have my mouth shut, I'm present, and people feel safe.

Minnesota is viewed as a very liberal state and kind of the mecca for restorative justice and that's true in some ways. But it's not true in terms of violent crimes. In 1990, when I was asked to facilitate the first homicide case by parents of a murdered child who came to me, there was no public policy anywhere in the country or in the world that I knew of. The Minnesota Department of Corrections trusted me, and they made special arrangements for me to facilitate. I'm still in touch with the family after all these years. Today, there are more than 30 states that have official documentation and administrative protocol in the Department of Corrections that give the right to a victim of any kind of crime to meet the incarcerated prisoner, if the prisoner agrees to it, and if there's sufficient preparation. So, on the one hand, it looks like much more is going on in America than we'd think. On the other hand, a lot of that is practiced far less frequently than one might expect

Dzur: It looks good on paper, as they say.

Umbreit: It looks good on paper, right. I'm amazed I'm not more of a cynic on this stuff.

6 The future of restorative justice

Dzur: I would like to ask one final question about the future of restorative justice. What are your hopes for restorative justice? What are the biggest challenges for the movement?

Albert Dzur

Bowen: I'm a lawyer in the drug court, and we have a tribal leader, if you like, in the system, and we have a whole group of people in the room talking about one offender. For me this is very restorative because every fortnight the offender comes and talks about their recovery journey. And everybody's interested, and they have somebody to help them, culturally, somebody to help them medically, judges and lawyers helping them through the system. I've learned over the years that there can be restorative interventions: just a phone call to somebody to see how they are after an offence. The smallest things can have the biggest impact. As Mark has been talking about, you've got to be present when you're doing that. I did mindfulness training because that helped me be a better facilitator. You make the most of that opportunity because it can expand hugely the potential of what we do.

Dzur: Just to expand on that point, what is it about the drug court experience that is important for restorative justice advocates to learn? Is it that there are several different kinds of people involved, or the continuity of it?

Bowen: Yesterday we had law students observing, we had previous offenders come in and watch, and so the whole room was full. What offenders say is, basically, 'I feel so nurtured in the space, and I am not used to judges talking like this to me, and really looking at me. And in the space, I feel valued, I feel listened to, I feel people care. You talk to me in a compassionate way.' All of these things are values that probably Māori need in order to make a process actually restorative. But I can actually see it happening in our courtroom because it's a therapeutic court. It's expanding. I love the idea that it doesn't just have to be post-sentence or pre-sentence in a court. This is a whole court that is restorative.

Dzur: And you wouldn't have seen that 20 years ago?

Bowen: No, and I didn't know it was going to happen. I just found myself in a restorative environment.

Dzur: Kristel, your thoughts on the future of restorative justice, what do you hope to see?

Buntinx: I hope that we get courts like in New Zealand! That's my hope. My fear is the toxic polarisation in society, which makes people not want this anymore. That's my fear.

Dzur: Can you say a little bit more about that in the Belgian context? Is it distrust of government or distrust of neighbours, or both?

Buntinx: I think both. It's distrust in the justice system. It's also a distrust in people who think differently. It's the distrust in seeing victim-offender mediation as something weak, or woke. It's those kinds of things.

Dzur: We have that over here in the United States, don't we, Mark?

Umbreit: Oh my god, yes. If you ask me what the future I hope would be, it would be that every citizen in free and democratic societies is given the right to first

access a restorative response in a criminal justice setting, or any context whatsoever. They're not just told by a bureaucrat, but there's a well-trained way of presenting it in a culturally sensitive way. If that happened, I would predict it would have enormous impact on the system with more citizens choosing that and less costly interventions.

I'm a big supporter of a restorative practice that doesn't use the word 'restorative'. I'm part of a bipartisan citizens movement that brings together Trump supporters and those who are vehemently opposed to Trump, including people of colour. It's called 'Braver Angels' and it's in most states. That to me is part of rebuilding our culture. If there isn't that kind of human communication, then we're in bad trouble.

References

- Umbreit, M. (2013). *Dancing with the energy of conflict and trauma: letting go, finding peace, in families, communities, and nations*. Scott Valley: CreateSpace Independent Publishing Platform.
- Zehr, H. (1990). *Changing lenses: a new focus for crime*. Scottsdale: Herald Press.